

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-11-0038

PETITION TO AMEND RULE 55(a) OF)
THE ARIZONA RULES OF CIVIL)
PROCEDURE AND RULE 44 OF THE)
ARIZONA RULES OF FAMILY LAW)
PROCEDURE)
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FILED 08/30/2012

ORDER

**AMENDING RULE 55(a) OF THE ARIZONA RULES OF CIVIL PROCEDURE AND RULE
44 OF THE ARIZONA RULES OF FAMILY LAW PROCEDURE**

A petition having been filed proposing to amend Rule 55(a), Arizona Rules of Civil Procedure, and Rule 44, Arizona Rules of Family Law Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rule 55(a), Arizona Rules of Civil Procedure, and Rule 44, Arizona Rules of Family Law Procedure, be amended in accordance with the attachment hereto, effective January 1, 2013.

DATED this 30th day of August, 2012.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Norman J Davis
Sarah R Simmons
Richard E Gordon
Aaron Nash
John A Furlong
mwa

ATTACHMENT¹

Arizona Rules of Civil Procedure

Rule 55(a). Application and entry

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the clerk shall enter that party's default in accordance with the procedures set forth below. All requests for entry of default shall be by written application to the clerk of the court in which the matter is pending.

(1) *Notice.*

(i) To the Party. When the whereabouts of the party claimed to be in default are known by the party requesting the entry of default, a copy of the application for entry of default shall be mailed to the party claimed to be in default.

(ii) Represented Party. When a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not that attorney has formally appeared, a copy of the application shall also be sent to the attorney for the party claimed to be in default. Nothing herein shall be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default.

(iii) Whereabouts of Unrepresented Party Unknown. If the whereabouts of a party claimed to be in default are unknown to the party requesting the entry of default and the identity of counsel for that party is also not known to the requesting party, the application for entry of default shall so state.

(iv) Other Parties. Nothing in this Rule relieves a party requesting entry of default from the requirements of Rule 5(a) as to service on other parties.

(2) Entry of Default. The acceptance by the clerk of the filing of the application for entry of default constitutes the entry of default.

(23) Effective Date of Default. A default entered by the clerk shall be effective ten (10) days after the filing of the application for entry of default.

(34) Effect of Responsive Pleading. A default shall not become effective if the party claimed to be in default pleads or otherwise defends as provided by these Rules prior to the expiration of ten (10) days from the filing of the application for entry of default.

(45) Applicability. The provisions of this rule requiring notice prior to the entry of default shall apply only to a default sought and entered pursuant to this rule.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

Arizona Rules of Family Law Procedure

Rule 44. Default Decree

A. Application and Entry. When a party against whom a judgment for affirmative relief is sought has failed to respond or otherwise defend as provided by these rules, the clerk shall enter that party's default in accordance with the procedures set forth below. All requests for entry of default shall be by written application to the clerk of the court in which the matter is pending.

1. *Notice.*

a. *To the Party.* When the whereabouts of the party claimed to be in default are known by the party requesting the entry of default, a copy of the application for entry of default shall be mailed to the party claimed to be in default.

b. *Represented Party.* When a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not that attorney has formally appeared, a copy of the application shall also be sent to the attorney for the party claimed to be in default. Nothing herein shall be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default.

c. *Whereabouts of Unrepresented Party Unknown.* If the whereabouts of a party claimed to be in default are unknown to the party requesting the entry of default and the identity of counsel for that party is also not known to the requesting party, the application for entry of default shall so state and shall be mailed to the unrepresented party's last known address.

2. *Entry of Default.* The acceptance by the clerk of the filing of the application for entry of default constitutes the entry of default.

23. *Effective Date of Default.* A default entered by the clerk shall be effective ten (10) days after the filing of the application for entry of default.

34. *Effect of Responsive Pleading.* A default shall not become effective if the party claimed to be in default pleads or otherwise defends as provided by these rules prior to the expiration of ten (10) days from the filing of the application for entry of default.

45. *Applicability.* The provisions of this rule requiring notice prior to the entry of default shall apply only to a default sought and entered pursuant to this rule.

B. [No change in text.]

C. [No change in text.]

D. [No change in text.]

E. [No change in text.]

F. [No change in text.]

G. [No change in text.]

COMMITTEE COMMENT

[No change in text.]